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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,674	10/31/2003	Richard D. Carter	100202751-1	1022

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EXAMINER

KOEMPEL THOMAS, BEATRICE L

ART UNIT	PAPER NUMBER
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2132

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/698,674

Applicant(s)

CARTER, RICHARD D.

Examiner

Bea Koempel-Thomas

Art Unit

2132

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 31 October 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-49 are pending in this application and presented for examination.

Objections

Specification

2. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code (page 12 lines 1 and 14; and page 13 line 16). See MPEP § 608.01.
3. Describing figure 2, page 16 lines 16, et seq., describes element numbered 250, a server. Figure 2 does not contain the cited reference number, 250, but does show the server element, and figure 1 contains the cited reference number, 250. In order to further prosecution the examiner considered the element 250 and the server labeled in figure 2 as the same element. Appropriate correction is requested.

Abstract

4. Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said,"

Art Unit: 2132

should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract should include the following:
 - a. for a machine or apparatus, its organization and operation;
 - b. for an article, its method of making;
 - c. for a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

6. The abstract of the disclosure is objected to because it includes the legal phraseology "in one embodiment," which is not necessary for a concise statement of the technical disclosure of the patent. Further, the abstract should include that which is new in the art to which the invention pertains regarding the claimed methods, apparatuses, and article of manufacture.

Appropriate correction is required. See MPEP § 608.01(b).

Drawings

7. The formal drawings were received on 19 July 2005.
8. The drawings are objected to because:

Figure 2 lacks reference number 250 referring to the server element as described in the specification.

Figure 5, within element 505, “Region (identifies **where the region where** the cd was released” (emphasis added) contains apparent typographical errors, including lacking an ending parenthesis.

9. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

10. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Art Unit: 2132

11. Claim 34 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 34 could reasonably be drawn to non-functional descriptive material, per se, i.e., *instructions stored thereon* may be taken to mean a program listing recorded on a computer-readable storage medium without any functional interrelationship, and as such, claim 34, would be directed to non-statutory subject matter. The specification does not preclude this interpretation. Further, claim 34 does not necessarily transform a physical object to a different state or thing nor produce a useful, concrete and tangible result.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. **Claims 1-6, 9-11, 13-23, 26-28, 30-34, and 36-49 are rejected under 35 U.S.C. 102(e) as being anticipated by DeMello et al., U.S. Patent No.7,017,189 B1, (hereinafter DeMello).**

14. **Regarding claims 1, 18 and 49:** DeMello discloses a method (regarding claims 1 and 49) and apparatus (regarding claim 18) for remote data backup and restoration, comprising:

creating a signature tag that is associated with a track stored in a memory of a digital entertainment unit (col. 4-5 lines 18-28);

Art Unit: 2132

transmitting the signature tag to a repair facility (col. 10 lines 28-44); and

authenticating the track based upon the signature tag (col. 10 lines 28-44).

15. **Regarding claims 16, 33, 34, and 48:** DeMello discloses an apparatus (regarding claims 16 and 33), an article of manufacture (regarding claim 34), and a method (regarding claim 48) for remote data backup and restoration, comprising:

a digital entertainment unit (col. 5 lines 30-67) configured to create a signature tag that is associated with a track stored in the digital entertainment unit (col. 4-5 lines 18-28), and to transmit the signature tag to a repair facility (col. 10 lines 28-44).

16. **Regarding claims 36 and 42:** DeMello discloses a method and apparatus, respectively, for authenticating media content, comprising:

receiving a signature tag that is associated with a track stored in a memory of a digital entertainment unit (col. 10 lines 28-44); and

authenticating the track based upon the signature tag (col. 10 lines 28-44).

17. **Regarding claims 2, 19, 37, and 43:** DeMello discloses that the track includes media content (col. 3 lines 38-45).

18. **Regarding claims 3, 20, 38, and 44:** DeMello discloses that the signature tag comprises:

a first part including information about the customer, digital entertainment unit, and source of the track (col. 5 lines 6-28).

19. **Regarding claims 4 and 21:** DeMello discloses that the first part of the signature tag comprises at least one of a unique file name, ID3 data, information related to the digital entertainment unit, customer information, and authentication identifier (col. 7 lines 1-7).

Art Unit: 2132

20. **Regarding claims 5 and 22:** DeMello discloses that the ID3 data is obtained from a stored MP3 file that includes the track (col. 9 lines 23-56 and Fig. 4).
21. **Regarding claims 6, 23, 39, and 45:** DeMello discloses that the signature tag comprises:
a second part including content information about the track (col. 9 lines 23-56 and Fig. 4).
22. **Regarding claims 9, 26, 40, and 46:** DeMello discloses that the signature tag comprises:
a header including a destination address for the signature tag (col. 6 lines 34-60 and Figs. 1-3;
examiner notes that target addressing information, including that of the target server, is inherent in the operation of a web interface).
23. **Regarding claims 10 and 27:** DeMello discloses storing the signature tag at a server in the repair facility (col. 10 lines 40-44).
24. **Regarding claims 11, 28, 41, and 47:** DeMello discloses that the signature tag is stored in a customer account folder in the server, and wherein the customer account folder is associated with an owner of the digital entertainment unit (col. 11 lines 30-54).
25. **Regarding claims 13 and 30:** DeMello discloses if the track has been authenticated, then restoring the track into the memory of the digital entertainment unit (col. 12-13 lines 38-67 and col. 16-17 lines 53-29) and repairing the digital entertainment unit (col. 12 lines 11-37).
26. **Regarding claims 14 and 31:** DeMello discloses that the authenticated track is obtained from a content owner by use of a communication line from a facility of the content owner to the repair facility (col. 16-17 lines 53-29).
27. **Regarding claims 15 and 32:** DeMello discloses that the authenticated track is obtained from a server in the repair facility (col. 16-17 lines 53-29).

Art Unit: 2132

28. **Regarding claim 17:** DeMello discloses that the digital entertainment unit further comprises:

a processor (Fig. 1 ele. 21);

a memory (Fig. 1 ele. 22); and

a tag module (col. 4-5 lines 18-28) that is executable by the processor, wherein the tag module is configured to create the signature tag that is associated with the track stored in the memory (col. 4-5 lines 18-28) and to transmit the signature tag to a repair facility (col. 10 lines 28-44).

Claim Rejections - 35 USC § 103

29. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

30. **Claims 7, 8, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeMello in view of Margolus et al., U.S. Patent Publication No. 2004/0255140 A1, (hereinafter Margolus). Examiner notes that Margolus is a continuation of application No. 09/785,535, filed 16 February 2001, and of provisional application No. 60/183,466, filed 18 February 2000, both of which disclose the relied upon subject matter.**

Art Unit: 2132

31. **Regarding claims 7 and 24:** DeMello discloses a method of remote data backup including content information as indicated regarding claims 6 and 23, above.

DeMello does not explicitly disclose that the content information is obtained from a third party service. Margolus discloses that the content information is obtained from a third party service [0161].

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify DeMello by the use of a third party service as taught by Margolis in order to make more efficient use of storage space (*see* Margolus [0161]).

32. **Regarding claims 8 and 25:** DeMello discloses a method of remote data backup including content information as indicated regarding claims 6 and 23, above.

DeMello does not explicitly disclose that the content information comprises album data and track data. Margolus discloses that the content information comprises album data and track data. [0161].

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify DeMello by the use of album data and track data as taught by Margolis for the benefit of cataloging while eliminating essentially duplicate copies of the same material (*see* Margolus [0161]).

33. **Claims 12, 29 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeMello in view of Olarig et al. U.S. Patent No. 6,032,257 (hereinafter Olarig).**

34. **Regarding claims 12 and 29:** DeMello discloses a method and apparatus for remote data backup as indicated regarding claims 1 and 16, above.

DeMello does not explicitly disclose sending the digital entertainment unit to the repair facility if the digital entertainment unit is subject to failure.

Olarig discloses sending the digital entertainment unit to the repair facility if the digital entertainment unit is subject to failure (col. 2 lines 1-3).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify DeMello by the function of submitting a unit for repair work as taught by Olarig in order to confirm that the unit malfunction is not due to unauthorized components (*see* Olarig, col. 4 lines 57-61).

35. Regarding claim 35: DeMello discloses A method for remote data backup and restoration, the method comprising:

creating a signature tag for a track that is loaded by a customer into a memory of a digital entertainment unit (DEU) (col. 4-5 lines 18-28);

transmitting the signature tag to a repair facility (col. 10 lines 28-44) and storing the signature tag into an account folder that is associated with the customer (col. 11 lines 30-54);

repairing the DEU (col. 12 lines 11-37),

determining the tracks legally obtained by the customer by examining the signature tags in the customer account folder (col. 10 lines 28-44); and

loading the tracks into the memory of the DEU (col. 12-13 lines 38-67 and col. 16-17 lines 53-29).

Art Unit: 2132

DeMello does not explicitly disclose sending the DEU that has failed to the repair facility; or returning the DEU to the customer. Olarig discloses sending the DEU that has failed to the repair facility (col. 2 lines 1-3); and returning the DEU to the customer (col. 2 lines 1-3).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify DeMello by the function of submitting a unit for repair work as taught by Olarig in order to confirm that the unit malfunction is not due to unauthorized components (*see* Olarig, col. 4 lines 57-61).

Conclusion

36. The prior art made of record and not relied upon but considered pertinent to applicant's disclosure is:

- Pham et al., U.S. Patent Publication No. 2004/0107342 A1 regarding a secure network file access control system.
- Steiger et al., U.S. Patent Publication No. 2003/0217292 A1 regarding communicating data to and from network security devices.
- DeLaHueraga, U.S. Patent Publication No. 2002/0116509 A1 regarding a data collection device and system.
- Adams, U.S. Patent No. 6,351,815 B1 regarding a media-independent document security method and apparatus.
- Rabin et al., U.S. Patent No. 7,131,144 B2 regarding methods and apparatus for protecting information.

Art Unit: 2132

- Kugai, U.S. Patent No. 6,799,271 B2 regarding authenticating a user and providing service.
- Naslund et al., U.S. Patent Publication No. 2005/0278787 A1 regarding robust and flexible digital rights management involving a tamper-resistant identity module.
- Ginter et al., U.S. Patent No. 5,892,900 regarding secure electronic management and electronic rights protection.
- Martinez et al., U.S. Patent No. 6,119,229 regarding a virtual property system.
- Goland, U.S. Patent Publication No. 2003/0056114 A1 regarding networked device branding for secure interaction in trust webs on open networks.
- Callahan et al., U.S. Patent Publication No. 2004/0172558 A1 regarding a method and system for access control.
- Araujo et al., U.S. Patent Publication No. 2002/0032725 A1 regarding remote access of an integrated virtual office via a web browser with remote network monitoring and management capabilities.
- Fischer, U.S. Patent No. 6,105,072 regarding validating traveling object-oriented programs with digital signatures.
- Yuen et al., U.S. Patent Publication No. 2003/0014670 A1 regarding enhanced security between a web server and a PSTN-based voice portal.
- Tayebi et al., U.S. Patent Publication No. 2003/0163724 A1 regarding a method and system allowing a customer to preview, acquire and/or pay for information.
- Underwood, U.S. Patent No. 6,704,873 B1 regarding a secure gateway interconnection in an e-commerce based environment.

Art Unit: 2132

- Bharat, U.S. Patent No. 6,577,735 B1 regarding backing-up data stored on a portable audio player.

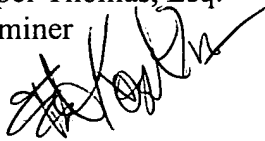
Please direct any inquiry concerning this communication or earlier communications from the examiner to Bea Koempel-Thomas whose telephone number is 571-270-1252. The examiner can normally be reached on Monday - Thursday & alternate Fridays; 0730 - 1700.

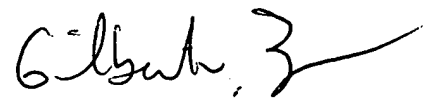
If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, Gilberto Barron, at 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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